

Act No. 91

Public Acts of 2008

ENROLLED HOUSE BILL No. 4417

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 2517 (MCL 339.2517), as amended by 2000 PA 436.

The People of the State of Michigan enact:

Sec. 2517. (1) A licensee shall disclose to a potential buyer or seller in a real estate transaction all types of agency relationships available and the licensee's duties that each agency relationship creates before the disclosure by the potential buyer or seller to the licensee of any confidential information specific to that potential buyer or seller.

(2) Unless knowingly waived by execution of a limited service agreement, a real estate broker or real estate salesperson providing services under any service provision agreement shall, at a minimum, provide to the client the duties described in section 2512d(2) and the services described in section 2512d(3).

(3) The disclosure of the type of agency relationship shall be in writing, shall be provided to the client, and shall substantially conform to the following:

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee. A real estate transaction is a transaction involving the sale or lease of any legal or equitable interest in real estate consisting of not less than 1 or not more than 4 residential dwelling units or consisting of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

(1) An agent providing services under any service provision agreement owes, at a minimum, the following duties to the client:

- (a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.
 - (b) The performance of the terms of the service provision agreement.
 - (c) Loyalty to the interest of the client.
 - (d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.
 - (e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the licensed agent.
 - (f) An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.
 - (g) Confidentiality of all information obtained within the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.
- (2) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall provide the following services to his or her client:
- (a) When the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.
 - (b) Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.
 - (c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.
 - (d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.
 - (e) For a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associated broker showing each party all receipts and disbursements affecting that party.

Michigan law requires real estate licensees who are acting as agents of sellers or buyers of real property to advise the potential sellers or buyers with whom they work of the nature of their agency relationship.

Seller's Agents

A seller's agent, under a listing agreement with the seller, acts solely on behalf of the seller. A seller can authorize a seller's agent to work with subagents, buyer's agents and/or transaction coordinators. A subagent is one who has agreed to work with the listing agent, and who, like the listing agent, acts solely on behalf of the seller. Seller's agents and subagents will disclose to the seller known information about the buyer which may be used to the benefit of the seller. Individual services may be waived by the seller through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

Buyer's Agents

A buyer's agent, under a buyer's agency agreement with the buyer, acts solely on behalf of the buyer. Buyer's agents and subagents will disclose to the buyer known information about the seller which may be used to benefit the buyer. Individual services may be waived by the buyer through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), or (d) above may be waived by execution of a limited service agreement.

Dual Agents

A real estate licensee can be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent, in writing, of both the seller and the buyer.

In such a dual agency situation, the licensee will not be able to disclose all known information to either the seller or the buyer.

The obligations of a dual agent are subject to any specific provisions set forth in any agreement between the dual agent, the seller, and the buyer.

Licensee Disclosure (check one)

I hereby disclose that the agency status of the licensee named below is:

_____ Seller's Agent

_____ Seller's Agent - limited service agreement

_____ Buyer's Agent

_____ Buyer's Agent - limited service agreement

_____ Dual Agent

_____ None of the above

Affiliated Licensee Disclosure (check one)

_____ Only the licensee's broker and a named supervisory broker have the same agency relationship as the licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee's broker and all named supervisory brokers shall be considered disclosed consensual dual agents.

_____ All affiliated licensees have the same agency relationship as the licensee named below.

Further, this form was provided to the buyer or seller before disclosure of any confidential information.

Licensee Date

Licensee Date

Acknowledgment

By signing below, the parties acknowledge that they have received and read the information in this agency disclosure statement and acknowledge that this form was provided to them before the disclosure of any confidential information.

Potential Buyer/Seller (circle one) Date

Potential Buyer/Seller (circle one) Date

(4) On a separate form, the following information in the following format shall be provided to a client desiring to waive any of the services required under section 2512d(3)(b), (c), and (d) by execution of a limited service agreement:

LIMITED SERVICE AGREEMENT

Pursuant to Michigan law certain services provided by a real estate licensee may be waived.

A real estate licensee is required to perform certain services for his or her client unless these services are waived by the client. By signing below, you agree that the real estate licensee will not be required to perform the services initialed (only initial the services waived).

Initial if waived:

--Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease your property or the property you seek to purchase or lease. _____

--Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived. _____

--After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement. _____

Agreement to Waive

By signing below, I acknowledge that the duties owed to me pursuant to Michigan law have been explained to me and that I knowingly agree that the real estate licensee who represents me will not provide the services that are initialed above. I also understand that in any proposed real estate transaction, no other real estate licensee is required to provide the waived services unless I subsequently hire them to do so. I also acknowledge that in order to protect my interests I may need to retain other professionals, such as an attorney.

Seller or Buyer Date

Seller or Buyer Date

Real Estate Broker or Salesperson Date

Brokerage Name

(5) This article does not prevent a licensee from acting as a transaction coordinator upon proper notice to all parties to a real estate transaction.

(6) A broker and a client may enter into a designated agency agreement. In the absence of a written designated agency agreement, a client is considered to have an agency relationship with the broker and all affiliated licensees.

(7) A designated agency agreement shall contain the name of all associate brokers who are authorized to act as supervisory brokers. If designated agents who are affiliated licensees represent different parties in the same real estate transaction, the broker and all supervisory brokers are considered disclosed consensual dual agents for that real estate transaction. Designated agents who are affiliated licensees representing different parties in the same transaction shall notify their clients that their broker represents both buyer and seller before an offer to purchase is made or presented.

(8) Except as otherwise provided in subsection (7), a client with a designated agency agreement is not considered to have an agency relationship with any affiliated licensees of the designated agent. Two designated agents who are affiliated licensees may each represent a different party in the same transaction and shall not be considered dual agents. The designated agent's knowledge of confidential information of a client is not imputed to any affiliated licensee not having an agency relationship with that client.

(9) A designated agent shall not disclose confidential information of a client to any licensee, whether or not an affiliated licensee, except that a designated agent may disclose to any supervisory broker confidential information of a client for purposes of seeking advice or assistance for the benefit of the client. A licensee who represents a client in an agency capacity does not breach any duty or obligation owed to that client by failing to disclose to that client information obtained through a present or prior agency relationship.

(10) A listing agreement or a buyer's agency agreement may be amended to establish a designated agency relationship, to change a designated agent, or to change supervisory brokers at any time pursuant to a written addendum signed by the parties.

(11) As used in this section:

(a) "Affiliated licensees" means individuals licensed as salespersons or associate brokers who are employed by the same broker.

(b) "Buyer" means a purchaser, tenant, or lessee of any legal or equitable interest in real estate.

(c) "Buyer's agent" means a licensee acting on behalf of the buyer in a real estate transaction who undertakes to accept the responsibility of serving the buyer consistent with those fiduciary duties existing under common law.

(d) "Designated agent" means an individual salesperson or an associate broker who is designated by the broker as the client's legal agent pursuant to a designated agency agreement.

(e) "Designated agency agreement" means a written agreement between a broker and a client in which an individual salesperson or associate broker affiliated with that broker is named as that client's designated agent.

(f) "Dual agent" means a licensee who is acting as the agent of both the buyer and the seller and provides services to complete a real estate transaction without the full range of fiduciary duties owed by a buyer's agent and a seller's agent.

(g) "Real estate transaction" means the sale or lease of any legal or equitable interest in real estate where the interest in real estate consists of not less than 1 or not more than 4 residential dwelling units or consists of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

(h) "Seller" means the equitable or legal owner of real estate.

(i) "Seller's agent" means a licensee acting on behalf of the seller in a real estate transaction who undertakes to accept the responsibility of serving the seller consistent with those fiduciary duties existing under common law.

(j) "Supervisory broker" means an associate broker designated in a written agency agreement to act in a supervisory role in an agency relationship.

(k) "Transaction coordinator" means a licensee who is not acting as the agent of either the buyer or the seller.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4416 of the 94th Legislature is enacted into law.

Enacting section 2. This amendatory act takes effect July 1, 2008.